IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

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S.B. Civil Second Appeal No. 619/2006

Kanti Chandra & Ors.

Versus

Ramswaroop & Ors.

Date of order :: August 13, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Dr. Ram Kishan Sharma for the appellants
Mr. Sandeep Jain for the respondents

BY THE COURT:

1. This second appeal is directed against the concurrent findings of the two courts below in a partition matter.

2. Both the courts below have found vide orders dated

02.02.2001 (trial court) and 11.10.2006 (First appellate court) that the property in question was self-acquired property of the respondents and therefore, the plaintiff-appellants could not claim any share in the same.

3. Learned counsel for the appellant has submitted that in another suit No. 300/1963, Govind Narain Vs. Ramswaroop, the defendant Ramswaroop had admitted in his written statement that the said property was of undivided Hindu family and this contention was noticed by the trial court on page 10-11 of its order dated 02.02.2001. It is seen from the perusal of these orders that both the courts have noted that the said written statement in the aforesaid suit was not even signed by the defendant Ramswaroop and therefore, the same was not taken as an admissible evidence by the courts below and the property in question was treated as self-acquired by the defendant.

4. In this regard, the Hon'ble Supreme Court in the case of *Gurudev Kaur Vs. Kaki* reported in (2007) 1 RLW 636 has held that jurisdiction under Section 100 CPC of second appeal cannot

be exercised against concurrent findings of two courts below as there was no legislative intention behind Section 100 CPC of providing the same as third trial on facts.

5. In view of the said position of law, the concurrent findings of the courts below against the plaintiff-appellant, this court is of the opinion that no substantial question of law arises in the present case and the present second appeal is devoid of merit and liable to the dismissed.

6. Consequently, the present appeal is dismissed with no order as to costs.

(Dr.VINEET KOTHARI),J.

Pramod
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